

(2011) 06 JH CK 0074

In the Jharkhand High Court

Case No : Contempt Case (C) No. 13 and 14 of 2011 and W.P. (C) No. 4878 and 4881 of 2010

Jee Bee Enterprises

APPELLANT

Vs

Shiv Basant, Chairman, J.S.E.B and Others

RESPONDENT

Date of Decision : 13-06-2011

Acts Referred:

Citation : (2011) 06 JH CK 0074

Hon'ble Judges : Rakesh Ranjan Prasad, J

Bench : Single Bench

Judgement

R.R. Prasad, J.—The writ Petitioner came with the case that Central Sponsored Project, namely, Accelerated Power Development Programme (A.P.D.R.P) was assigned to the Petitioner for augmentation, renovation etc. of the transmission lines in the township of Katras and Jamtara which was executed by the Petitioner and got completed in March, 2010. After its completion, State Electricity Board started drawing power through newly laid transmission lines. As per the agreement, payment was supposed to be made on the pro-rata basis meaning thereby that the payment was to be made time to time on completion of part of the project but it was not only ignored by the Board completely, rather even after completion of the project, payment was not made, though one committee constituted for verification of the project did certify that the APDRP project has been completed in accordance with the specification and the Board is drawing power through transmission line. On such certificate, even the Chairman took a decision to make payment to the Petitioner. But when the payment was not made to the Petitioner, there was No. option left with the Petitioner but to approach this Court, vide, W.P.(C) Nos. 4878 of 2010 and 4881 of 2010 for a direction to the Respondents to make payment of the claim of the Petitioner as per the terms of the contract.

2. After hearing learned Counsel appearing for the parties, both the aforesaid writ applications were disposed of on 3.11.2010 with a direction to the Petitioner

to lay his claim before the Chairman, Electricity Board, Ranchi, so that decision be taken by the Chairman in the matter of payment in accordance with the terms and conditions of the contract within a period of four weeks.

3. Pursuant to that decision, representation was made before the Chairman, Electricity Board on 20.11.2010, but when No. decision was taken, two contempt petitions bearing Nos. 13 of 2011 and 14 of 2011 were filed on 7.1.2011.

4. Subsequent to filing of the aforesaid two contempt petitions, an Interlocutory Application bearing No. 125 of 2011 was filed in W.P (C) No. 4878 of 2010 stating therein that some deficiency has been found in the project which was laid down by the Petitioner, assessment of the extent of the deficiency would atleast consume two months" time and hence, prayer was made to grant two months" time for taking decision in the matter.

5. Prayer made in the said interlocutory application was resisted by the learned Counsel appearing for the Petitioner by submitting that earlier at the time of disposal of the writ application, the stand which was taken on behalf of the Jharkhand State Electricity Board for non-payment of the claim was that there had been delayed completion of the job assigned to the Petitioner and that some problem has arisen on account of illegal allotment of the work but now the stand is being taken that some deficiency has been found which plea does not have any substance for the reason that the Board earlier in its meeting had resolved to stop payment till the verification of the project is made by the committee constituted by the Board and the committee on verifying the project did certify that the project has been completed in accordance with the specification and even the Board is drawing power through the transmission line and on that report, the Chairman had even taken decision for making payment.

6. Considering the submission and the facts and circumstances, this Court observed that there may be some deficiency but the entire project has never been shown to be faulty and as such, Respondent was directed to make payment to the Petitioner atleast to the extent of 50% of the claim within four weeks. Accordingly, the said interlocutory application was disposed of. However, the case was ordered to be listed after four weeks so that the aforesaid order be complied with. Meanwhile an interlocutory application bearing No. 1132 of 2011 was filed for recalling/modifying the order dated 17.3.2011 on the following grounds.

(a) Subsequent to passing of the order on 17.3.2011, this Court passed an order on 28.3.2011 in C.W.J.C No. 1793 of 2001 entrusting the enquiry and institution of the case in relation to various works of Jharkhand State Electricity Board ignoring the Centrally Sponsored Schemes of Rajiv Gandhi Gramin Viyutikaran and Accelerated Power Development Reform Programme (b) An audit objection had been received from Principal Accountant General (Audit), Jharkhand in relation to tender process and allotment of tender on enhanced tender price.

(c) Vigilance enquiry is going on in the matter of allotment of tender for APDRP.

(d) Request has been made to Power Grid Corporation of India to carry out technical audit of all APDRP packages.

7. By referring to those grounds Mr. V.P. Singh, learned Senior counsel appearing for the Board submits that unless vigilance enquiry is completed or audit report of the Power Grid Corporation comes and unless C.B.I completes such investigation, it would not be appropriate to make payment to the Petitioner and hence, prayer was made to recall/modify the order dated 17.3.2011.

8. More or less similar type of objections have been raised in the show cause filed in the contempt petition on 7.6.2011.

9. Since the order has been sought to be reviewed on fresh grounds without filing any review application, I do not intend to entertain the said interlocutory application filed in the writ application. However, since similar objections have been taken in the show cause filed in the contempt petition, the same are being dealt with in the contempt petition.

10. Mr. Rajiv Kumar, learned Counsel appearing for the Petitioner submits that the Board has always been taking different frivolous stands in order to justify his action towards non-compliance of the order of this Court which gets demonstrated from the fact that when writ applications were disposed of by this Court, vide order dated 3.11.2010, Petitioner in terms of the order put forth his claim which he was entitled to get in terms of the contract but when No. decision was taken within the time stipulated by the court, contempt applications were filed on 20.12.2010. Thereupon the Board in order to frustrate the claim of the Petitioner took a decision on 1.1.2011 to get sample verification of the project by a committee within three days. The committee on making verification of the project related to Jamtara township did find that the work has been completed but certain materials worth Rs. 1.5 lac (approx.) could not be found. The committee submitted its report, vide memo No. 352 dated 24.2.2011. However, an interlocutory application bearing No. 125 of 2011 was filed on 11.1.2011 seeking extension of time for two months for complying the order passed by this Court, though on the day i.e. 17.3.2011 when said interlocutory application came for hearing, report of the committee was very much there. However, in order to get the matter relating to payment expedited the Petitioner made it known to the court that the Petitioner is even ready to forgo the said amount of 1.5 lac and made an offer before this Court that if the Board offers to make payment, the Petitioner would withdraw the said amount on furnishing indemnity bond. On such plea being advanced learned Counsel appearing for the Board sought time to seek instruction in the matter but it is quite strange to note that now by filing show cause and the interlocutory application bearing No. 1132 of 2011 in the writ application, several objections are being raised so as to deny the rightful claim of the Petitioner but none of the objections do have substance so as to claim of the Petitioner be denied. Learned Counsel submits that so far reference of the matter to the vigilance is concerned, that relates to the year 2009 but nothing adverse has come against the Petitioner till date.

11. It was pointed out that so far objection relating to entrustment of the matter relating to Rajiv Gandhi Gramin Viyutikaran and also the matter relating to APDRP is concerned, it is basically directed against the officials of the Electricity Board on whose fault, there has been transmission loss more than the national average.

12. Again it was stated that so far audit objection by Accountant General (Audit) is concerned, that relates to the process of finalization of the tender which is nothing to do with the completion of the project which has been done in accordance with specification as has been reported by the committee. Moreover, it has been reported by Accountant General in its preliminary audit report that there has been tardy implementation of the APDRP project but that is on account of the fault of the officials and also on account of several factors including delayed work order. Under the circumstances, it was submitted that there has been absolutely No. justification on the part of the opposite party to deny the claim of the Petitioner.

13. Having heard learned Counsel appearing for the parties, it is apparently clear that the Board has been taking different stands at different point of time in order to deny the claim of the Petitioner. Initially, at the time of disposal of the writ applications, plea was taken that on account of delayed completion of the project, payment was not made, though the committee on making verification of the project had submitted its report certifying that the project has been completed in accordance with the specification and the Board is drawing the power through the transmission line. On such certificate even the Chairman had taken decision to make payment.

14. Considering that aspect of the matter, writ applications were disposed of whereby the Petitioner was asked to lay down his claim before the Chairman, State Electricity Board, who was directed to take a decision in the matter of payment in accordance with the terms and conditions of the contract within the time stipulated under the order. When No. decision was taken, a contempt petition was filed. Thereupon an interlocutory application was filed on 11.1.2011 stating therein that a committee has been constituted under the order dated 1.1.2011 for verification of APDRP project of Jamtara and Katras and it may take time to submit its report and therefore, prayer was made to extend the time for two months for taking decision in the matter of payment to the Petitioner.

15. However, the Court taking into account the entire facts and circumstances did observe that the entire project never seems to be faulty and hence, direction was issued to make payment atleast to the extent of 50% of the claim within four weeks.

16. Subsequently, when the matter came up for hearing again it was pointed out by learned Counsel appearing for the Board that the committee has submitted its report wherein it was reported that they did find deficiency in the work worth Rs. 1.5 lac which was suggested to be kept in abeyance. Upon it, it was stated on

behalf of the Petitioner that the Petitioner is ready to forgo that amount and even is ready to furnish indemnity bond of the amount which would be paid to the Petitioner. However, the case got adjourned at the instance of learned counsel appearing for the Board in order to seek instruction on that particular point. But now show cause has been filed wherein several objections, as stated above, have been taken but after hearing learned Counsel appearing for the Petitioner I do find that none of the objections raised would come in the way in the entitlement of the claim as admittedly the vigilance has never come forward till date with any enquiry relating to deficiency in the project and at the same time, C.B.I though has been entrusted with investigation but nowhere it has been clear that the project in question is also the subject matter of investigation and that so far objection of the Accountant General (Audit) is concerned, that relates to the process of finalization of the tender which on completion and being in accordance with the specification cannot have any bearing and so far reference of the technical objection by the Power Grid Corporation is concerned, it is beyond the scope of terms and conditions of the contract and thus, it is evidently clear that the Board has been raising different objections at different point of time only to defeat rightful claim of the Petitioner.

17. Accordingly, the Chairman, Electricity Board is hereby directed to make payment in terms of the contract to the Petitioner within a period of three weeks from the date of receipt/production of a copy of this order subject to condition that the Petitioner does furnish indemnity bond of the amount which would be paid to the Petitioner.

18. It is further made clear that decision in this case may not be treated as precedence for laying claim in similar circumstances.

19. Let this matter be listed after three weeks on 4.7.2011 by which date if this order is not complied with, proceeding of contempt would be initiated against the Chairman, Electricity Board.